



## Insurance Banking & Construction

### A Daily Bulletin listing Decisions of Superior Courts of Australia

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#### Executive Summary (1 minute read)

**Bat Advocacy NSW Inc v Minister for Environment Protection, Heritage & the Arts - Environment Protection & Biodiversity Conservation Act 1999 (Cth) - relocation of flying foxes from Royal Botanic Gardens in Sydney - appeal dismissed (I, B, C)**

**Buzzle Operations Pty Ltd (in liq) v Apple Computer Australia Pty Ltd - s588FB Corporations Law - whether transaction uncommercial - shadow directors - appeal dismissed (I, B, C)**

**Tomanovic v Global Mortgage Equity Corporation Pty Ltd - s232, s233 Corporations Act 2001 (Cth) - oppression - winding up (B)**

**Director General, Department of Services, Technology & Administration v Veall & Ors (No 2) - Trade Practices Act 1974 (Cth) - Fair Trading Act 1987 (NSW) - introduction agency - accessorial liability (I)**

**Oswal v Carson & Ors (Ruling No 2) - Discovery of documents - whether discovery of emails should be made (I, B, C)**

**Boulter v Crouch & Anor - Professional negligence - failure to commence personal injury claim within statutory limitation period - appeal dismissed (I)**



**Ross v Hallam** - Defamation - primary judge had granted summary judgment against appellant with indemnity costs - appeal allowed (I)

**Gawler Region Community Forum Inc v Minister for Urban Development & Planning** - Application for permission to proceed with judicial review granted (C)

## Summaries with links (5 minute read)

### Wednesday 11 May 2011

#### **Bat Advocacy NSW Inc v Minister for Environment Protection, Heritage & the Arts [2011] FCAFC 59**

Full Court of the Federal Court of Australia

Emmett, McKerracher & Foster JJ (in Sydney)

*Environment Protection & Biodiversity Conservation Act 1999* (Cth) - for Federal Court decision 17 February 2011, see 'Benchmark' Monday 21 February 2011 & link below - appeal as to validity of decision made by first respondent to give approval for second respondent, Royal Botanic Gardens & Domain Trust to take action for relocation of a colony of grey-headed flying foxes from the Royal Botanic Gardens in Sydney - appellant contending the decision was an improper exercise of power - its principal assertion that the Minister failed to take into account a relevant consideration, namely, the impact that the removal of the colony from the Gardens would have on the grey-headed flying foxes (*Pteropus poliocephalus*) as a species - appeal dismissed.

[Bat Advocacy NSW](#) (I, B, C)

[Bat Advocacy NSW](#) - decision 17 February 2011 - *Environment Protection & Biodiversity Conservation Act 1999* (Cth) & other legislation - application dismissed.

#### **Buzzle Operations Pty Ltd (in liq) v Apple Computer Australia Pty Ltd [2011] NSWCA 109**

Court of Appeal of New South Wales

Hodgson, Young & Whealy JJA

s588FB *Corporations Law* - new company taking over business which owed debt to respondent - new company not obliged to pay debt - whether transaction uncommercial - question of who is a shadow director - "in accordance with", "the directors", "accustomed" - appeal dismissed.

[Buzzle Operations](#) (I, B, C)



## [Read Headnote](#)

[Buzzle Operations](#) - decision 30 March 2010: see 'Benchmark' Friday 9 April 2010 - merger & proposed float of plaintiff - shadow directors - defendant's consent required and given for merger to proceed - plaintiff granted charge to defendant over plaintiff's assets - failure of float & plaintiff's business - definition of "officer" in s9 *Corporations Law* - Australian & United Kingdom legislation considered - analysis of text & case law from the United Kingdom & Australia.

## **Tomanovic v Global Mortgage Equity Corporation Pty Ltd [2011] NSWCA 104**

Court of Appeal of New South Wales

Campbell, Macfarlan & Young JJA

s232, s233 *Corporations Act* 2001 (Cth) - oppression - principles for deciding time as at which value of share to be decided for compulsory buy-out order - winding up - compulsory buyout order preferable where serious commercial detriment arise from winding up of companies and where both parties submit compulsory buyout preferable.

[Tomanovic](#) (B)

## [Read Headnote](#)

[Tomanovic](#) - decision 5 March 2010 on the final hearing of three proceedings - proceedings for relief on statutory oppression grounds dismissed - judgment for plaintiffs in Common Law proceedings - cross-claim dismissed

## **Director General, Department of Services, Technology & Administration v Veall & Ors (No 2) [2011] NSWSC 358**

Supreme Court of New South Wales

Buddin J

*Trade Practices Act* 1974 (Cth) - *Fair Trading Act* 1987 (NSW) - allegations of misleading & deceptive conduct - allegations of unconscionable conduct - introduction agency - accessorial liability - *ex parte* proceedings in respect of first & third defendants - "knowingly concerned" - extensive consideration of Australian case law.

[Department of Services, Technology and Administration](#) (I)

## **Oswal v Carson & Ors (Ruling No 2) [2011] VSC 192**

Supreme Court of Victoria

Ferguson J

Discovery of documents - first three defendants have been appointed receivers & managers under a charge registered over assets fourth defendant, Burrup Fertilisers Pty Ltd - plaintiff the wife of the former managing director of BFPL - plaintiff seeking declaration that emails are her property & that the defendants be required to deliver them up to her - whether discovery of emails should



be made - whether confidentiality regime should apply to discovered emails - defendants entitled to review all the emails.

[Oswal](#) (I, B, C)

### **Boulter v Crouch & Anor [2011] QCA 93**

Court of Appeal of Queensland

McMurdo P; Muir & Fraser JJA

Professional negligence - accident boarding council bus - appellant had sued her former lawyers for their negligence for failure to commence personal injury claim within statutory limitation period - respondents admitted that appellant's claim would have succeeded - issue in dispute as to quantum of damages that plaintiff would have been awarded had proceedings commenced in time - appeal dismissed.

[Boulter](#) (I)

[Boulter](#) - decision 20 July 2010: see 'Benchmark' Thursday 22 July 2010

### **Ross v Hallam [2011] QCA 92**

Court of Appeal of Queensland

McMurdo P, Chesterman JA & Atkinson J

Defamation - respondent had brought an action for damages for defamation against appellant - primary judge had granted summary judgment against appellant with indemnity costs - appellant had not been legally represented in proceedings before primary judge - appeal allowed.

[Ross](#) (I)

### **Gawler Region Community Forum Inc v Minister for Urban Development & Planning [2011] SASC 76**

Supreme Court of South Australia

Judge Lunn a Master of the Supreme Court

Application for permission to proceed with judicial review - proceedings in which plaintiff seeking a declaration that defendant's decision to approve the Gawler East Development Plan Amendment was invalid & orders for judicial review in the nature of certiorari and prohibition to quash that approval and to prohibit further consideration of that Amendment - plaintiff's application for permission to proceed with the judicial review part of the proceeding pursuant to 6SCR 200(1) [see *Supreme Court Civil Rules 2006* (SA) Chapter 8: Special kinds of action; Part 3: Actions for judicial review] - "a reasonable basis on which the applicant might establish a right ... to judicial review" under sub-r 200(4) - degree to which a plaintiff need establish its right to





judicial review under 6R 200(4) should not be any greater than that which need be shown for a plaintiff to avoid a summary judgment under 6R 232(2)(b) - permission granted.

[Gawler Region Community Forum](#) (C)

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